IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L.)NO. 1845 OF 2004

Bahuddin A. Enamdar ....Petitioner

Versus

Municipal Corporation of Gr. Mumbai and Ors. ...Respondents

Dr. Virendra Tulzapurkar instructed by M/s. Kishore Thakordas & Co. for the petitioner.

Mr. D.H. Mehta with Ms. A.K. Savla for respondent Nos. 1 to 3.

Mr. V.R. Bhandare for respondent No. 5.

CORAM: **DALVEER BHANDARI, C.J** &
DR. D.Y. CHANDRACHUD,J.

DATE: JULY 29, 2004.

P.C.

The Municipal Corporation of Greater Mumbai invited sealed tenders for supply of JCB (Excavator Loader)/Closed Body Vehicles with tipping arrangement for the work of removal of refuse brought to Kurla Refuse Transfer Station at L. B. S. Marg, Kurla to Deonar dumping ground on weighment basis as per the M.S. W. Rules,

2000. In the tender instructions, it is clearly mentioned that the tenders are invited in two packets. Packet 'A' contains technical and commercial bid and packet 'B' contains only financial bid. Both these packets are to be sealed individually and thereafter these packets are to be put into an outer envelope which is to be lacquered.

2. Packet 'A' is to be opened on due date as specified in the tender notice. Packet 'B' which contains the tender bids of those who were found responsive and eligible is to be opened thereafter. The due date of opening of packet 'B' is to be communicated to the eligible tenderers three days in advance.

3. In the instant case, after packet 'A' was opened, the tender bids were scrutinized and packet 'B' of only those tender bids which were found to be responsive was opened. The packet "B" was opened on 19th June, 2004. The submission of the petitioner is that even after packet 'B' containing of only responsive tender bids was opened, the Tender Committee of the Municipal Corporation can still legitimately consider any tender bid for grant of the contract. This contention is seriously disputed by the respondents.

4. The learned counsel appearing for the Municipal Corporation filed an affidavit of Mr. Bhasagare Prasad Dattatray, Assistant Engineer (SWM) E.S. in the employment of respondent No.1. He has stated in the affidavit that packet 'A' was opened by respondent-Corporation on 23rd April, 2004. Mr. Mehta, learned counsel appearing for the Municipal Corporation, submits that in paragraph 4 (c) of the affidavit, the date 19.6.2004 has been wrongly mentioned. In fact, the packet 'A' was opened on 23rd April, 2004. After opening of packet 'A' it was noticed that respondent No.5 had not submitted the original tender document duly signed as per the mandatory conditions. A decision was taken not to open packet 'B' of respondent No.5. It is also submitted in the affidavit that the petitioner had also not complied with certain mandatory conditions such as sales tax, registration, registration certificate, dumper detail requirements. After taking an overall view and to dispel any allegations of favoritism or otherwise, decision was taken by the Municipal Administration to open packet 'B' of all the tenderers. The said decision was taken to avoid any allegations of favoritism or unreasonableness.

5. We have heard the learned counsel for the parties. We are of the considered view that once the Corporation has decided to open packet 'B' , thereafter it is obligatory for the Corporation to place the matter before the Tender Committee and the Tender Committee is obliged to select one out of the tenderers from packet 'B' only after giving valid and sound reasons for accepting the tender. The Municipal Corporation has rightly rejected the claim of respondent No.5.

6. In the facts and circumstances, we direct the Tender Committee to consider the claims of all those tenderers who were found to be responsive when they opened packet 'B'. Let this exercise be carried out within six weeks from today. No further directions are necessary. This petition is accordingly disposed of.

7. The parties to act on copies of this oder duly authenticated by the Private Secretary/Associate of this Court.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.